IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7146 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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UPENDRASINH SAJJANSINH RATHOD

Versus

DISTRICT SUPERINTENDENT OF POLICE

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Appearance:

1. Special Civil Application No. 7146 of 2001

MR MITUL K SHELAT for Petitioner No. 1

MR PITAMBAR ABICHANDANI Ld. AGP for Respondents No. 1-2

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 09/10/2001

ORAL JUDGEMENT

Heard the learned counsel for the petitioner Mr Shelat and Mr Abichandani learned AGP for the respondent.

According to the petitioner, father of the

petitioner namely Sajjansinh Gulabsinh Parmar was the sole bread winner of the family and was serving with the Police Department as Head Constable who died on 3.7.1998. The petitioner persuaded the department for compassionate appointment vide application dated 21.8.1998. It is contended that the department did not take any decision qua the request made by the petitioner, but ultimately, the claim of the petitioner was denied on the ground that the family of deceased is getting family pension along with other benefits like provident fund, gratuity etc. and the income of the family of deceased is more than Rs. 2500/. I have considered the scheme which has reflected in the letter Annexure-B, page 14 and the Government resolution Annexure-C page 18. It is submitted by the learned counsel appearing for the petitioner that if the amount of family pension is excluded from the income of the family of deceased, than the income does not exceeds the prescribed limits provided in the Government resolution i.e. Rs. 2500/. Mr. Shelat mainly relies on the decision of this Court in Special Civil Application No. 9197/2001 dated 15.6.2001 ( Coram: P.B. Majmudar, J.). The decision of this court is based on the observations made by this Court in Special Civil Application No. 11020 of 1993 in the case of Dilipsinh B. Rathod vs. State of Gujarat.

The view of this Court is consistent in view of the fact that while considering the total income of the family of the deceased, the income of pension is required to be taken into consideration. Some observations made in para-3 of the said judgment is relevant and has been quoted by the learned Single Judge while dealing with the above special civil application. While dealing with the Special Civil Application No. 6519/2001, this Court (Coram: C.K. Buch, J.) while allowing the petition based on the similarly situated facts and considering the decision of Special Civil Application No. 11020/1993 dated 1.1.1999 (Coram: M.R. Calla, J.) and the subsequent decision of Division Bench of this Court where the said decision has been carried by way of LPA. The respondents are directed to consider the case of the petitioner for compassionate appointment. I would like to quote the relevant part of the decision rendered by the Division Bench of this Court in LPA No. 739/1999, which reads as under:

"The learned Single Judge, relying upon the decisions of this Court in C.B. Maru vs. Dhandhuka Nagar Panchayat, 1993(2) GLH 822 and Manubhai Godhabhai Desai vs. State of Gujarat, 1998(1)GLH (UJ) 23, held that the contention put

forward by the authorities cannot be accepted. In C.B. Maru's case, the Court considered a decision of the Supreme Court in Smt. Phoolmati vs. Union of India, AIR 1991 SC 469. Learned Single Judge accordingly allowed the petition and directed the respondent authorities to decide the case of the petitioner on its own merits considering him to be eligible."

It is not the case of the otherside that the family of the deceased have any other source of income or have any valuable immovable properties. The denial is based on single proposition that the income of the family is exceeding the limits in view of the income of family pension.

In view of the above legal position, I am of the view that the above all decisions are squarely applicable to the facts of this case and it is rightly contended by the Mr. Shelat that facts of this case being similar to those, this petition should be allowed. So, the respondents are, therefore, directed to decide the case of the petitioner on merits and considering him to be eligible provided that the income does not exceeds the limits i.e. Rs. 2500/ excluding the amount of pension received by the family on account of death of petitioner's father. The respondent-Department is expected to take decision within 8 weeks from the date of receipt of the order.

Rule is made absolute to the aforesaid extent only. DS Permitted.

(C.K. BUCH, J.)
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